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**THIS DISPOSITION
IS NOT CITABLE AS PRECEDENT
OF THE T.T.A.B.**

Paper No. 12
EWH/krd

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Normajean Fusco

Serial No. 75/368,502

Gail E. Nickols of Graham, Campaign, P.C. for Normajean
Fusco.

Rodney Dickinson, Trademark Examining Attorney, Law Office
112 (Janice O'Lear, Managing Attorney).

Before Hanak, Quinn and Hohein, Administrative Trademark
Judges.

Opinion by Hanak, Administrative Trademark Judge:

Normajean Fusco (applicant) seeks to register MAGNAMUD
in typed drawing form for "massaging oils, muds and
lotions, and non-medicated bath salts." The application
was filed on October 6, 1997 with a claimed first use date
of October 1, 1997.

The examining attorney has refused registration
pursuant to Section 2(d) of the Trademark Act on the basis

that applicant's mark, as applied to applicant's goods, is likely to cause confusion with the mark MAGNA, previously registered in typed drawing form for "suntan lotions, gels and oils." Registration No. 2,157,422.

When the refusal to register was made final, applicant appealed to this Board. Applicant and the examining attorney filed briefs. Applicant did not request a hearing.

In any likelihood of confusion analysis, two key considerations are the similarity of the marks and the similarity of the goods. Federated Foods, Inc. v. Fort Howard Paper Co., 544 F.2d 1098, 192 USPQ 24, 29 (CCPA 1976).

Considering first the marks, we note that applicant has adopted registrant's mark MAGNA in its entirety and added thereto the descriptive term MUD. Thus, we find that the two marks are very similar. However, we should note that the word "magna," while originally a Latin word, has entered the English language and is defined as meaning "great." The Random House English Dictionary (2d ed. 1987). Thus, registrant's mark MAGNA is highly laudatory and very suggestive. Accordingly, it is entitled to a somewhat more limited scope of protection. 2 J. McCarthy,

McCarthy on Trademarks and Unfair Competition Section 11:17
at pages 11-23 (4th ed. 2000).

Turning to a consideration of the goods, registrant's goods are suntan products and applicant's goods are massaging products and non-medicated bath salts. The examining attorney has never contended, much less proven, that suntan products and massaging products and non-medicated bath salts are marketed under the same trademarks. Rather, the examining attorney has merely argued and established that both types of products "move in the same channels of trade." (Examining attorney's brief page 7). In particular, the examining attorney has made of record printouts from nine websites of companies which offer a variety of products including suntan products and massaging products. However, these websites do not establish that both types of products are marketed under the same trademarks. Indeed, the examining attorney's own website evidence demonstrates that on many occasions, these two types of products are marketed under different trademarks.

Today, on-line marketers offer such a wide array of products that they are comparable to large "brick and mortar" stores. It has been held in the past that the mere fact that two types of products can be found in large

stores is simply not sufficient to establish that the products are related. Federated Foods, 192 USPQ at 29. We believe that the same reasoning applies with regard to the on-line marketing of today. In other words, absent a showing that suntan products and massaging products and non-medicated bath salts are marketed under the same trademarks, the mere fact that both types of products are marketed on some of the same websites is simply insufficient, by itself, to establish that the products are related to any extent other than that both types of products can be applied to the body.

In sum, given the fact that there is only a minimal relationship between registrant's and applicant's goods; the fact that registrant's mark MAGNA is very highly suggestive and laudatory; and the fact that the marks are not identical, we find that there exists no likelihood of confusion.

Decision: The refusal to register is reversed.

E. W. Hanak

T. J. Quinn

G. D. Hohein
Administrative Trademark
Judges, Trademark Trial
and Appeal Board